IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BLAIR VINEYARDS, LLC, Plaintiff, v. BLAIR VINEYARDS, LLC, Defendants.	Civil Action Case No: **COMPLAINT** *JURY TRIAL DEMANDED*

Plaintiff Blair Vineyards LLC, a California limited liability company, ("Blair" or "Plaintiff"), by and through its attorneys Carle, Mackie, Power and Ross LLP, as and for its Complaint against Defendants Blair Vineyards, LLC, a Pennsylvania limited liability company, and DOES 1 through 10 (collectively, "Defendants") alleges as follows:

NATURE OF ACTION

1. Blair is the owner of the registered, incontestable trademark BLAIR ESTATES®, U.S. Registration No. 3,112,553, in International Class 33 for wine (the "BLAIR ESTATES Mark"). Since acquiring the BLAIR ESTATES Mark, Blair has sold tens of thousands of bottles of ultra-premium wine featuring the BLAIR ESTATES Mark, with revenues from such sales in hundreds of thousands of dollars. Blair continues to market and sell wines bearing the BLAIR ESTATES Mark, and considers the BLAIR ESTATES Mark to be a prized asset of its business.

2. This action arises out of Defendants' unauthorized incorporation and infringing use of the confusingly similar common law trademarks BLAIR and BLAIR VINEYARDS on and in connection with, *inter alia*, Defendants' vineyard, winery and wine products ("Defendants' Marks").

3. Despite Blair's written requests, Defendants have refused to cease their use of Defendants' Marks. Accordingly, Blair brings this action for infringement of the BLAIR ESTATES Mark in violation of § 32 of the Lanham Act, 15 U.S.C. §§ 1114(1); for unfair

competition and false designation of origin in violation of § 43 of the Lanham Act, 15 U.S.C. § 1125(a); for common law injury to business reputation; and for unfair competition and trademark infringement under the common law of the State of Pennsylvania. Blair hereby seeks permanent injunctive relief restraining Defendants' continuing and future infringement of the BLAIR ESTATES Mark, monetary damages, and recovery of attorneys' fees and costs.

JURISDICTION AND VENUE

4. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a) and 15 U.S.C. § 1121. This Court has related claim jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over Defendants because, upon information and belief, Defendants, either directly or through their agents, transacted business in the State of Pennsylvania and in this judicial district ("district"), directed their activities to the State of Pennsylvania and this district, committed the tort of infringement in this district, and/or expected or should reasonably have expected their acts to have consequences in the State of Pennsylvania and this district.

6. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because Defendants are conducting business in this district, a substantial part of the events or omissions giving rise to the claims occurred in this district, and Defendants are entities with the capacity to sue and be sued in their common names and are subject to personal jurisdiction in this district.

THE PARTIES

7. Plaintiff Blair Vineyards, LLC, is and at all times mentioned herein was, a limited liability company existing under the laws of the State of California, having a principal place of business in Salinas, Monterey County, California.

8. Upon information and belief, Defendant Blair Vineyards LLC is, and at all times mentioned herein was, a limited liability company under the laws of the State of Pennsylvania, having a principal place of business in Kutztown, Berks County, Pennsylvania.

9. Plaintiff is currently unaware of the identities of Defendants Does 1 through 10,

and therefore sues such defendants by such pseudonyms. Upon information and belief, discovery shall reveal the true identities of those defendants and Plaintiff shall then amend this Complaint to identify those defendants by name.

10. Upon information and belief, there now exists, and at all relevant times herein there existed, a unity of interest and ownership between and among the Defendants, such that any individuality and separateness between and among them has ceased to exist, and Defendants, and each of them, are the alter egos of each other, had the authority to bind the others in transactions with third parties, committed acts and omissions leading to the infringement of the BLAIR ESTATES Mark and Plaintiff's damages, were acting in concert and active participation with each other in committing the acts alleged herein, and in so doing acted within the scope and course of their agency with every other defendant named herein and each of them authorized, directed, accepted, ratified, and approved such actions.

FACTUAL BACKGROUND

11. On or before August 20, 2001, Christopher R. Johnson and Kristi L. Johnson DBA Blair Estate (the "Johnsons"), began using the trademark BLAIR ESTATES as a source designator for wine in interstate commerce. On April 3, 2003, the Johnsons applied to register the BLAIR ESTATE Mark with the United States Patent and Trademark Office ("USPTO") in International Class 33 for wine. On July 4, 2006, the USPTO approved the Johnsons' application and issued a Certificate of Registration for the BLAIR ESTATES Mark for "wine" in International Class 33, U.S. Reg. No. 3,112,553.

12. On or about April 4, 2009, Christopher R. Johnson died and thereafter Christopher R. Johnson's interest in the BLAIR ESTATE Mark was transferred to Kristi L. Johnson pursuant to California Probate Code Section 13100. On or about May 16 2012, Kristi L. Johnson assigned the BLAIR ESTATE Mark to Plaintiff Blair pursuant to an Intellectual Property Purchase Agreement for which Blair paid to Kristi L. Johnson Twenty-Five Thousand Dollars ($25,000).

13. On September 14, 2016, Blair filed a combined Declaration of Use and

Incontestability under Sections 8 and 15 of the Lanham Act with the USPTO for the BLAIR ESTATES Mark. Accordingly, the BLAIR ESTATES trademark registration is valid, subsisting, and incontestable pursuant to 15 U.S.C. § 1065 and § 1115(b).

14. Blair also owns the domain name www.blairwines.com, and has operated a website at this address to promote its goods under BLAIR ESTATES Mark. Blair is also the owner of the Blair Vineyards LLC Twitter account (@BlairVineyards).

15. Since on or before August 20, 2001, Blair and/or the Johnsons have continuously used the BLAIR ESTATES Mark in interstate commerce in connection with wine.

16. Since acquiring the BLAIR ESTATES Mark, Blair has spent hundreds of thousands of dollars and expended thousands of man-hours developing and promoting the BLAIR ESTATES Mark and to maintain the preeminent reputation of the brand. Accordingly, the BLAIR ESTATES Mark now enjoys considerable goodwill in the alcoholic beverage industry, among consumers, and among the general public.

17. Wines sold under the BLAIR ESTATES Mark have received substantial praise and exceptional reviews. As an example, one of Blair Vineyard's BLAIR ESTATE branded Pinot Noir received these reviews and awards:

- Rated 91 Points by Wine Enthusiast Magazine
- Rated 91 Points by International Wine Review
- Awarded Double Gold at the 2016 Denver International Wine Competition
- Awarded Gold, and 90 Points at the 2016 The Toast of the Coast Wine Competition
- Awarded Best of the Arroyo Seco AVA at the 2016 The Toast of the Coast Wine Competition
- Awarded Gold at the 2016 New York International Wine Competition
- Awarded Gold at the 2016 San Francisco International Wine Competition

- Awarded Silver at the 2016 Jefferson Cup Invitational
- Awarded Silver at the 2016 Texsom International Wine Competition
- Awarded Silver at the 2016 Los Angeles International Wine Competition
- Awarded Gold and 91 Points and Best of the Arroyo Seco AVA at the 2017 Toast of the Coast Wine Competition
- Awarded Gold at the 2017 East Meets West Wine Competition
- Awarded Silver at the 2017 Monterey International Wine Competition.

Other BLAIR ESTATES branded wines have received similar accolades including a 2013 BLAIR ESTATES branded Reserve Pinot Noir which received an astounding 94 point rating by Wine Enthusiast Magazine.

18. As a result of the Johnson's and Blair's efforts, and the great press BLAIR ESTATES branded wines have received, the BLAIR ESTATES Mark is widely recognized and respected by consumers as well as by members of the trade: distributors, restaurants, and retailers throughout the United States recognize the BLAIR ESTATES Mark as an exclusive designation of source for the goods of Blair. Moreover, consumers and the media have come to associate BLAIR ESTATES with Blair and its high-quality wines.

19. It recently came to the attention of Blair that Defendants are operating a winery under the name "Blair Vineyards" in the State of Pennsylvania at 99 Dietrich Valley Road, Kutztown, Pennsylvania ("Defendants' Winery").

20. Plaintiff is informed and believes that Defendants are making and selling a variety of wine products using the Defendants' Marks BLAIR and BLAIR VINEYARDS

21. On information and belief, consumers can taste and purchase wines bearing the BLAIR trademark and marketed under both the BLAIR and BLAIR VINEYARDS trademarks at Defendants' Winery and at several restaurants and stores in the State of Pennsylvania. On information and belief, Defendants are also providing vineyard and winery services under both

the BLAIR and BLAIR VINEYARDS trademarks. On information and belief, Defendants are the owners of the website www.blairvineyards.com, and are the owner of or affiliated with the @blairvineyards Instagram account and the @BlairVineyards Facebook account (www.facebook.com/BlairVineyards/).

22. Defendants marketing and promotion of their vineyard and wines on the internet as at www.blairvineyards.com and on social media accounts such as the @blairvineyards Instagram account, and the @BlairVineyards Facebook account has caused actual confusion among Blair's existing customers.

23. As an example of actual confusion, on or about September 3, 2015, Monterey County Weekly published an article entitled "Ways to Celebrate California Wine Month in Monterey County" providing links to a number of wineries in Monterey County, California. Instead of providing a link to Blair's website promoting its winery in Monterey County California, the article instead provided a link to Defendants' website promoting their Pennsylvania winery and wines. The article prompted one of Blair's customers to write to Blair's principal, Jeffrey Blair, stating: "Jeffrey ---FYI ----this article is REALLY confusing ------it's the Blair Vineyards in Pennsylvania!--------I think the Weekly made a big mistake ----and I worry that folks are going to think that YOU are holding a celebration at the vineyard (that's what I thought when I first read it!!!!!)"

24. Blair has sold wines to residents of the State of Pennsylvania from its California tasting room and is now preparing to sell wines directly to consumers in Pennsylvania.

25. Defendants' Marks, "BLAIR" and BLAIR VINEYARDS are confusingly similar to the Plaintiff's BLAIR ESTATES Mark, given that their mark incorporates the first word and dominant term of the BLAIR ESTATES Mark, "BLAIR", and is consequently similar in appearance, sound, connotation, and overall commercial impression. The harm arising from this similarity is exacerbated by the relatedness of Blair's and Defendants' goods, both of which are wines.

26. Defendants' use of Defendants' Mark on and in connection with wine is likely to

cause confusion, mistake or deception in the minds of consumers as to the source of Defendants' products, as to Blair's affiliation, connection, or association with Defendants, and/or as to Blair's approval or sponsorship of Defendants' products or commercial activities.

27. Defendants' infringing use of the confusingly similar mark BLAIR will financially and otherwise harm Blair, by diminishing the value of the BLAIR ESTATES Mark and threatening its ability to function as a unique and distinctive indicator of source for the company and its wines. Moreover, upon information and belief, Defendants' use of the infringing mark BLAIR for its wines will unjustly enrich Defendants by increasing the popularity and profitability of Defendants' products and business, to the detriment of Blair and consumers. Consumers may purchase Defendants' wines under a mistaken belief that such wines are from or are otherwise associated with/approved by Blair, and will may forgo purchasing Blair's wines, resulting in lost sales and profits for Blair. Blair and consumers will be harmed by the confusion caused by Defendants' aforementioned wrongful conduct and sharp business practices, which also constitute unfair competition. Furthermore, Defendants and their mark will unjustly benefit from the false association with Blair's BLAIR ESTATES Mark at no cost to Defendants.

28. Defendants have been well aware of Blair's trademark rights in the BLAIR ESTATES Mark since at least as early as January of 2016. In a letter dated January 16, 2016, Blair's counsel demanded that Defendants cease and desist from the use of Defendants' Mark in connection with its marketing and sale of wine. Nevertheless, Defendants have continued to market and sell their infringing BLAIR-branded wine.

29. Defendants' action have been deliberate, willful, malicious, and intentional and conducted with the intent of trading on the goodwill that inures to the BLAIR ESTATES Mark and reputation of Blair.

30. This case is an exceptional case, entitling Blair to treble damages, attorneys' fees, and punitive damages as allowed for under the Lanham Act and Pennsylvania law.

FIRST CLAIM

FEDERAL TRADEMARK INFRINGEMENT: 15 U.S.C. § 1114

31. Plaintiff repeats, and hereby incorporates herein by reference as though specifically pleaded herein, the allegations of paragraphs 1 through 30.

32. Defendants' Mark has been and is likely to be confused with Plaintiff's BLAIR ESTATES Mark.

33. Defendants' use of Defendants' Mark on its wine products constitutes use in commerce of a reproduction, copy or colorable imitation, and thus infringement, of Blair's registered BLAIR ESTATES trademark in connection with the offering for sale, distribution or advertising of goods or services on or in connection with which such use is likely to cause consumer confusion, mistake and deception as to source, sponsorship or approval of the Defendants' goods or services in violation of 15 U.S.C. § 1114. Moreover, Defendants' foregoing acts are causing irreparable harm to Blair for which there is no adequate remedy at law.

34. Defendants' ongoing acts of infringement are willful and deliberate, and result in substantial damage to Blair in an amount to be determined at trial.

35. By reason of the foregoing acts, Defendants are liable to Blair for trademark infringement under 15 U.S.C. § 1114.

SECOND CLAIM

UNFAIR COMPETITION 15 U.S.C. § 1125(a)

36. Plaintiff repeats, and hereby incorporates herein by reference as though specifically pleaded herein, the allegations of paragraphs 1 through 35.

37. Defendants' use of Defendants' Mark in connection with their wine products is such a colorable imitation and copy of Blair's established trademark that Defendants' use thereof is likely to create confusion, or to cause mistake, or to deceive consumers as to the affiliation,

connection or association of Blair's products or services, or to deceive consumers as to the origin, sponsorship or approval of Defendants' products or services in violation of 15 U.S.C. § 1125(a).

38. Defendants' incorporation and use of the BLAIR Mark on their products constitutes unfair competition in violation of 15 U.S.C. § 1125(a).

39. Defendants' use of the BLAIR Mark constitutes a false designation of origin in violation of 15 U.S.C. § 1125(a).

40. Defendants' ongoing acts of unfair competition and false designation of origin are willful and deliberate, and result in substantial damage to Blair in an amount to be determined at trial.

THIRD CLAIM

COMMON LAW INJURY TO BUSINESS REPUTATION

41. Plaintiff repeats, and hereby incorporates herein by reference as though specifically pleaded herein, the allegations of paragraphs 1 through 40.

42. Defendants' use of some or all of Blair's BLAIR ESTATES Mark inures and creates a likelihood of injury to Blair's business reputation because persons encountering Blair and its products or services will believe that Blair is affiliated with or related to or has the approval of Defendants, and any adverse reaction by the public to Defendants and the quality of their products and the nature of their businesses will injure the business reputation of Blair and the goodwill that it enjoys in connection with its BLAIR ESTATES Mark.

FOURTH CLAIM

COMMON LAW UNFAIR COMPETITION

43. Plaintiff repeats, and hereby incorporates herein by reference as though specifically pleaded herein, the allegations of paragraphs 1 through 42.

44. Defendants' actions constitute unfair competition under the common law of the State of Pennsylvania, including 73 Pa. Cons. Stat. § 201 and common law.

45. Defendants' ongoing acts of unfair competition are willful and deliberate, and result in substantial damage to Blair in an amount to be determined at trial.

FIFTH CLAIM

COMMON LAW TRADEMARK INFRINGEMENT

46. Plaintiff repeats, and hereby incorporates herein by reference as though specifically pleaded herein, the allegations of paragraphs 1 through 43.

47. The general consuming public recognizes the BLAIR VINEYARDS Mark as designating Blair as the source of wine products. Blair has common law trademark rights in the BLARI ESTATES Mark under California law.

48. Defendants' actions, as hereinbefore alleged, constitute trademark infringement in violation of the common law of the State of Pennsylvania.

49. Defendants' ongoing acts of infringement are willful and deliberate, and result in substantial damage to Blair in an amount to be determined at trial.

WHEREFORE, Plaintiff prays:

1. For an order requiring Defendants to show cause why they should not be enjoined as set forth herein, during the pendency of this action, upon application for such by Plaintiff;

2. That Defendants and their agents, officers, employees, representatives, successors, assigns, attorneys and all other persons acting for, with, by, through or under authority from Defendants, and each of them, be preliminarily and permanently enjoined from: (a) using the BLAIR trademark, BLAIR VINEYARDS trademark or any other colorable imitation of Plaintiff's BLAIR ESTATES trademark, and (b) using any trademark that imitates or is confusingly similar to or in any way similar to Blair's trademark BLAIR ESTATES, or that is likely to cause confusion, mistake, deception, or public misunderstanding as to the origin of Blair's products or services or their connection to Defendants;

3. That Defendants be ordered to recall from retailers, all infringing wine bearing the trademark BLAIR, the trademark BLAIR VINEYARDS or any trademark that imitates or is confusingly similar to Blair's trademark BLAIR ESTATES;

4. That, pursuant to 15 U.S.C. § 1117, Defendants be held liable for all damages suffered by Blair resulting from the acts alleged herein;

5. That, pursuant to 15 U.S.C. § 1117, Defendants be compelled to account to Blair Vineyards for any and all profits derived by them from their illegal acts complained of herein;

6. That the Defendants be ordered pursuant to 15 U.S.C. § 1118 to deliver up for destruction all containers, labels, signs, prints, packages, wrappers, receptacles, advertising, promotional material or the like in possession, custody or under the control of Defendants bearing a trademark found to infringe Blair's rights in the BLAIR ESTATES Mark, as well as all plates, matrices, and other means of making the same;

7. That Defendants be ordered to pay punitive damages in amount to be determined at trial;

8. That the Court declare this to be an exceptional case and award Blair, treble damages, its full costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117;

9. That the Court grant Blair any other remedy to which it may be entitled as provided for in 15 U.S.C. §§ 1116 and 1117 or under state law; and,

10. For such and other further relief that the Court deems just and proper.

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Respectfully submitted,

CAESAR RIVISE, PC

Dated: June 1, 2017

By: /s/Manny D. Pokotilow

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